

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§
v. § Cause No. 1:18-cr-01581-WJ
§
JOSEPH CALLOWAY, §
§
Defendant. §

NOTICE OF SUPPLEMENTAL AUTHORITY REGARDING
RENEWED AND AMENDED MOTION TO APPOINT CJA COUNSEL

On December 2, the Fourth Circuit joined the Second, Sixth, and Seventh in *United States v. McCoy*, No. 20-6821, --- F.3d. ---, 2020 WL 7050097 (4th Cir. Dec. 2, 2020). In considering whether courts could make independent determinations of what constituted extraordinary and compelling reasons or whether they must continue to defer to the BOP for that determination, the court noted,

The BOP used that power so “sparingly” that the Department of Justice’s Inspector General found in a 2013 report that an average of only 24 imprisoned persons were released each year by BOP motion. *See Zullo [Brooker]*, 976 F.3d at 231 (citing U.S. Dep’t of Just., Office of the Inspector Gen., *The Federal Bureau of Prisons’ Compassionate Release Program* 1 (2013), <https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf>); *United States v. Rodriguez*, 451 F. Supp. 3d 392, 395 (E.D. Pa. 2020). According to the same report, the BOP poorly managed the compassionate-release process and failed to establish timeliness standards for reviewing prisoner requests, causing delays so substantial that inmates sometimes died awaiting final BOP decisions. *See Zullo [Brooker]*, 976 F.3d at 231–32.

McCoy at *2, and determined that in light of the First Step Act’s amendments to § 3582(c), there is no “applicable policy statement” that district courts must follow. “By

its plain terms, in short, § 1B1.13 does not apply to defendant-filed motions under § 3582(c)(1)(A)" *Id.* at * 7.

Respectfully submitted,

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KARI CONVERSE